HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case

W.P. No. 1776 (S/B)/2002
Kashar Singh Danu

Vs.

Executive Engineer P.W.D.
Bageshwar and others.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 22.04.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1776(S/B) of 2002

Kashar Singh Danu .....Petitioner

Vs.

Executive Engineer P.W.D.
Bageshwar and others. .....Respondents

Counsel for the petitioner Sh. Sudhir Singh
And Sh. Dinesh Chauhan.
Standing counsel for the respondent.

Dated: -22-4-2004

Hon'ble Rajesh Tandon, J.

Heard Sh. Sudhir "Singh and Sh. Dinesh Chauhan learned counsel for the petitioner and Standing counsel for the respondent.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus directing the respondents to reinstate the petitioner as daily wage employee in the office of respondents and the respondents.

Brief facts giving rise to the present writ petition are that the petitioner was appointed on the post of Mazdur on daily wage basis in the year July 1996 and the petitioner continuously worked on the said post till July 2002. Respondent no. 1 has issued a certificate in favour of the petitioner that in his work since July 1996 to July 2002 there is no adverse entry against the petitioner. The petitioner has continuously worked in the office of respondent as daily wage labour till July 2002. The respondents have terminated the petitioners' services by an oral

order without assigning any reasons or without assigning any opportunity to the petitioner. On 3-8.2002 the petitioner moved a representation before respondent no. 1 to reinstate them in services and also prayed that the work as daily wager employees may be taken from him. Respondent has not paid any heed to the request of the petitioner and without serving any notice on him and without assigning any reason, terminated his service.

On 10-6-2002 Dr. Smt. Indra Hirdash, Minister of Public Finance sent a letter to Chief Engineer Dehradun Uttaranchal along with a letter of Sri. Kashi Singh Ari Directing the Chief Engineer P.D.W. that since an order has been passed that the entire daily wage employee shall be continued to work therefore one Shr. Chandra Shekhar Tiwari may also be allowed to continue to work.

In reply of the letter dt. 10-6-2002 the respondent no. 4 sent a letter on 15-6-2000 to respondent no. 3 for appointment of Shr. Chandra Shekhar Tiwari on daily wage Employee. On the basis of letter dt. 10-6-2002 Sh. Chandra Shekhar was reinstated, as daily wage employee in the office of respondents but the respondents did not given appointment to the petitioner, which is discriminatory and illegal.

The petitioner has relied upon the letter dt. 10-6-2002 by which other employees who were terminated, has been re-employed.

Petitioner has referred the judgment of Shrilekha Vidyarthi vs. State of U.P. AIR 1991 SC 537, with regard to parity. The observations are to the following effect:-

"It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of art. 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test is every sate action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

…… ……

Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It trite that 'be you ever so high, the laws are above you.' This what men in power must remember, always.

Almot a quarter century back, this Court n S.G. Jaisinghani vs. Union of India (1967) 2 SCR 703, at pp. 718-19: (AIR 1967 SC 1427 at p. 1434), indicated the test of arbitrariness and the pitfalls to be avoided in al State actions to prevent that vice, in a passage as under:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our while constitutional system is based. In a system governed by rule of law, discretion when conferred upon executive authorities must be confined within clearly defined limits. The rule of law fro this point of view means that decisions should le made by the application of known principles and rule s and in general, such decisions should be

predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision s the antithesis of a decision taken in accordance with the rule of law (see Dicey "Law of he Constitution"
Tenth Edn. Introduction ex.). "Law has reached its finest moments" stated Douglas, J. in United State v. Wunderlick (1951-342 US 98: 96 Law Ed 113), "When it has freed man from the unlimited discretion of some ruler.....where discretion is absolute, man has always suffered." It is in this sense that the rule of law may be said to be the sworn enemy of caprice, Discretion, as Lord Mansfield sated it in classic terms in the case of John Wikes (1770-98 ER 327) "means sound discretion guided by law. It must be governed by rule, not humor: it must not be arbitrary, vague and fanciful.

In view of the above, liberty is given to the petitioner to approach the authorities who shall decide the representation of the petitioner within a period of 6 weeks after production of the certified copy of this order.

The writ petition is disposed of accordingly. There will be no order as to costs.

(Rajesh Tandon, J.)

Dated: -22-4-2004

M.K